

## Introduction

**Government Administration and Elections Committee**  
**Testimony – February 14, 2010**

**Luther Weeks**  
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Chairs and members of the Committee, my name is Luther Weeks, Executive Director of CTVotersCount.

As Executive Director of the Connecticut Citizen Election Audit Coalition I have organized observations of seven (7) post-election audits, personally observed thirty-five (35) audit counting sessions around the State, observed several recanvasses, and most recently organized the Bridgeport Recount. Today, I am speaking for CTVotersCount.

I live in Glastonbury. I am a retired computer scientist and software engineer active in voting integrity in Connecticut and nationally since 2004. I am also a certified election moderator.

I have testimony and supporting information for several bills on today's agenda:

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**S.B. No. 938 – Support, with suggested improvements**

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We support the many of the updates based on the change to optical scanners. There are several areas that have not been addressed. Today, we suggest some of those which we have noticed. Some are easily accomplished, while others would require extensive revisions.

On page 7, lines 167 to 178 (9-134a(c)) the language seems to contemplate only two classes of ballots: polling place tabulator-counted and central-counted absentee counts. Actually, there are at least four classes of ballots: polling-place hand-counted; polling place tabulator-counted; central-hand-counted absentee; and central-tabulator-counted absentee ballots.

**Proposed substitute text (our recommendations in bold)**

167 (c) If the absentee ballots were counted at a central location, when  
168 all counting is complete the moderator shall publicly declare the result  
169 of such count **separately for the tabulator vote and hand count vote.** [He] The moderator shall then  
deliver to the head  
170 moderator the central counting moderator's returns, together with all  
171 other information required by law or by the Secretary of the State's  
172 instructions. The head moderator shall add the results from the voting  
173 [machines] **tabulators,** recorded on the moderator's return for each  
174 polling place, to the absentee count recorded on the central counting  
175 moderator's return for the corresponding voting district, in the manner  
176 prescribed by the Secretary of the State. The returns so completed shall  
177 show separately the [machine] **tabulator** vote and the **hand counted vote for both polling place and**  
**central count** absentee vote  
178 and the totals thereof.

On page 11, lines 293 to 306 (9-234) the language seems to limit polling places to only one checker per shift. Here and in all other such text of the law for ballot clerks and machine tenders, we recommend that "one" be changed to "at least one". That would conform to current practice.

Page 17, lines 512 to 514 has language that seems to apply to lever machines which should be updated contemplating modern technology.

**Proposed substitute text (our recommendations in bold)**

512 ...It shall be provided with [a lock] **mechanisms** by  
513 means of which any illegal [movement of the voting or registering  
514 mechanism] **voting, deleting, or changing of votes and totals** is absolutely prevented...

Page 23 lines 695 to 708 (9-242b(4)) provides authorization to the Secretary of the State to order discrepancy recanvasses. Unfortunately, that clause only applies to voting systems not currently employed in Connecticut. We recommend that similar authority be extended to all voting methods, including tabulators and hand counting. If such authority had been in place, perhaps the results for the Governor's race in November 2011 could have been officially and expeditiously corrected.

**Pages 33-34, lines 1025 to 1071 (9-309) covering closing of the polls, two changes are suggested.**

**First to specify that votes be recorded and announced separately by tabulator-counted and hand-counted.**

**Second, the current text only covers sealing of tabulators, completely disregarding the importance of sealing polling place ballots. We also point out that sealing and security of ballots should be clarified in the law in several places, specifying exactly how ballots should be secured, how they should be stored, storage facility requirements, the storage protected, storage access logged, inappropriate access prevented, and the length of time ballots should be sealed and protected – we recommend that all ballots be sealed and secured at all times when not in legal use, such that it is highly unlikely that a single individual could access the ballots or their sealed containers undetected.**

We provide a reference demonstrating the inadequacy of seals alone to protect ballots and tabulators:

<http://www.ctvoterscount.org/nj-chain-of-custody-six-unsuccessful-attempts-to-seal-voting-machines/>

**S.B. No. 939 – Oppose portions, with suggested improvements**

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We support the many of the updates based on the change to optical scanners. There are several areas that have not been addressed. Today, we suggest some of those which we have noticed. Some are easily accomplished, while others would require extensive revisions.

**This bill contains some provisions of substance that we recommend not be enacted.**

**Page 36-37, lines 1115 to 1145 (9-260) contemplate demonstrator “device”s replacing the demonstrator “machine”s. This seems ambiguous, as to what that device may be, providing little guidance to election officials in meeting the requirements of the section. I am unaware of any such “device” employed since we have changed to optical scan machines. The text could easily be interpreted as requiring a demonstrator for the IVS machines at considerable cost. My recommendation would be to strike the section from the current law.**

**On page 39, lines 1169 to 1172 (9-272) one critical word “securing” seems to have been omitted which would make the intention consistent.**

**Proposed modified text (our recommendations in bold)**

1169 ... The procedures for securing and counting the paper
1170 ballots described in this section shall comply as nearly as may be, in
1171 the manner prescribed by the Secretary of the State, to the securing and counting of
1172 absentee ballots.

**As we have said under S.B. 938 “Sealing and security of ballots should be clarified in the law in several places, specifying exactly how ballots should be secured, how they should be stored, storage facility requirements, the storage protected, storage access logged, inappropriate access prevented, and the length of time ballots should be sealed and protected – we recommend that all ballots be sealed and secured at all times when not in legal use, such that it is highly unlikely that a single individual could access the ballots or their sealed containers undetected.”**

**On page 39, line 1207 (9-311(a)) a “he” has been left in the law.**

**On pages 39-40, lines 1210-1250 (9-311(b)), describing recanvasses, we note that the text has been updated from “machine” to “tabulator” but makes no mention of tabulator-counted ballots being sealed or unsealed and does not seem to contemplate four classes of ballots: polling-place hand-counted; polling place tabulator-counted; central-hand-counted absentee; and central-tabulator-counted absentee ballots.**

**More critically, this provision seems to be an inadequate attempt to place the Secretary of the State’s procedures for optical scan recanvasses into the law.**

Text of proposed bill

1229 recanvass officials shall count by hand any ballot from which the  
1230 tabulator was unable to record a result.

- The proposed text seems to imply that ballots rejected by the machine would be counted by hand or somehow judged certain not to have been counted correctly or otherwise.
- This falls far short of the current Secretary of the State's recanvass procedures
- There is no manual means or standard AccuVote-OS scanning procedure with which officials could determine how a scanner interpreted a particular ballot, let alone that the scanner was "unable to record a result".
- The text does not mandate double checking of the classification of ballots, as required by existing procedures.
- **We strongly recommend that the law be consistent with and require at least as strong a review as the current recanvass procedures,**

The current Secretary of the State procedures call for each ballot to be examined by two officials before rescanning to find ballots that may depend on voter's intent or which might be marked in a way the tabulator might not read it accurately.

Text of current recanvass procedures, pages 9-10 (underlines and bold in original)

- (l) The recanvass officials of opposing political parties shall remove all other ballots in the ballot transfer case (except any ballots marked "spoiled ballots" from a polling place in which the marksense machine was used for polling place voting). They shall examine all these ballots which were machine counted on election day to determine whether the markings for the office being recanvassed are sufficiently clear to be read by the machine. *(See examples of properly and improperly marked ballots in this handbook as a guide)* Also, if a stickered race is being recanvassed, make sure that early absentee ballots issued without the corrected name are not machine counted. If any such error or defect is found, the ballot should be set aside for hand counting of the races involved in the recanvass. If two recanvass officials of opposing political parties agree that such ballots are sufficiently clear to be read by the machine, such ballots shall be processed through the machine.
- (m) For each voting district, the recanvass officials shall print and sign two elections results tapes that are printed by the machine and announce the machine results for the offices and questions subject to recanvass. Ignore the results for offices not subject to recanvass. The original tape which remains attached to the opening 000 tape should be removed and attached to the Recanvass Moderator's Return. The other copy of the report is posted.
- (n) All other ballots which were counted by machine on election day but that contain marks that either of the two election officials believes may not be properly read by the tabulator shall be counted by hand by recanvass officials of opposing political parties, recorded on the tally sheets on a "hand recount" line, and sealed in a new labeled depository envelope.

**We recommend that the current procedures be codified in the law or at least a short version consistent with and implying the current procedures in the law.**

Proposed short modified text

1229 recanvass officials of opposing interests shall review each ballot for marks that may cause a  
tabulator to record votes incorrectly or neglect voter's intent and shall count by hand any such ballot  
1230 and count remaining ballots by tabulator or by hand

Once again, the text should also accurately contemplate four classes of ballots, not just two: polling-place hand-counted; polling place tabulator-counted; central-hand-counted absentee; and central-tabulator-counted absentee ballots.

Based on the events in Bridgeport, the Coalition Bridgeport Recount Report recommended that the recanvass law and election calendar be changed to provide more time for discrepancy and close vote recanvasses. If the law is conformed to those recommendations, perhaps in a future very close-vote election, inaccuracies like those in Bridgeport could be officially corrected in time for a close-vote recanvass to occur or in time to prevent an unnecessary statewide recanvass:

Two Coalition Bridgeport Recount recommendations

- *In addition to head moderators, the Secretary of the State should have the power to order discrepancy recanvasses.*
- *Allow more time for the initial reporting of results, investigation of minor discrepancies, and for the accomplishment of recanvasses and the certification of results. There should a timeframe for discrepancy recanvasses, followed by a timeframe for subsequent close vote recanvasses. The current post-election and certification schedule in Connecticut should not be viewed as unchangeable. For example there could be a seven business day window for Discrepancy Recanvasses and their reporting and an additional five business day window for Close Vote Recanvasses to allow for changes in the initial reports resulting from Discrepancy Recanvasses.*

Pages 48, lines 1493-1499, (9-242(b)) and page 49 lines 1513-1519 (9-242(c)), would dramatically change the way cross-endorsed votes for the same candidate are handled.

- Currently our scanners accept dual votes and count them as party "Unknown"
- The proposed text would seem to require that polling place machines reject such votes and require that voters redo their ballot.
- This seems to be a unique requirement - if a voter overvotes in other races, then the voter has an option to put the ballot in the auxiliary bin and have the ballot counted by hand.
- The machines would have to be programmed to notify election officials that the overvote was in a cross-endorsed race, since officials are not supposed to look at the ballot, and the two types of overvotes would be handled differently.

We recommend against this change for several reasons:

- The Bridgeport Recount demonstrated that there are many "Unknown" votes, reviewing a sample, showed more votes classified as "Unknown" than those for the Working Family Party in race for Governor.
- The proposed change would cause some voters to give up, or just not vote in the race.
- The voters might transfer their disgust to the candidates and cross-endorsing parties involved
- Candidates might then be reluctant to accept cross-endorsements
- Finally, there is no indication that absentee ballot machines would be programmed differently, disenfranchising a considerable number of voters.
- How such ballots would be handled in hand counts would seem up to moderators who are expected to judge voter's intent on such ballots - we can expect that, if there is no "Unknown" on the scanner tape it would tend to be treated as an overvote in a hand count and disenfranchise voters.

**We also recommend verifying that our current voting machines can be programmed with certified software to accommodate this change. To save the Committee time, I contacted someone qualified to give a definitive answer, and the answer is that: Our scanners cannot support this change:**

**Question asked and answer received**

**QUESTION:**

Can the current version of the hardware and software for the AccuVote-OS in use in Connecticut be programmed via memory cards to present a distinct message for overvotes for cross-endorsed candidates than for regular overvotes, both for single and multiple vote contests? If not is there an existing certified version later than Connecticut's that supports this?

On 2/11/2011 11:43 AM, JEFF SILVESTRO wrote:

Luther,

None of this is possible. A cross endorsed candidate is still a single candidate, so the system will not recognize an overvote. Also the system is set with pre determined messages on the LCD. There is no way to add, remove or alter these messages. Please give me a call and we can discuss further. Are you aware of how cross endorsed candidates votes are tallied?

JEFF SILVESTRO

Vice President of Operations

LHS Associates, Inc.

**Page 59, line 1861 (9-307), reduces the retention period for voting check lists from four years to two. I oppose this provision.**

As a worker for a grass roots primary campaign in 2006, an instrumental part of the successful result was reviewing voting lists for frequent voters in similar elections going back several years. Parties regularly record such results in anticipation of future elections. However, we had to do it ourselves as a grass roots challenging campaign without such access to party resources.

**S.B. No. 940 – Oppose, with suggested alternatives**  
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**I am a strong supporter of new techniques and technologies that support independent machine auditing, but oppose this bill authorizing local officials to audit via "independent machine rather than a tabulator" as an alternative to the current manual count.**

Text of proposed bill

41 such audit using an independent machine rather than a tabulator.  
42 Once complete, the vote totals established pursuant to the [manual]

**While well intended, the proposed law provides no restrictions on such a machine, no requirements for the process, no standards, no guarantee the process would be anything like the successful example of Humboldt County, CA in 2008, and no budget for implementation.**

**Voting integrity and confidence require that any independent machine audit be required to meet standards for public transparency and validation.** In other words, vendors need to dot the "i"s and cross the "t"s in software and hardware products. The law must require election officials to also dot the "i"s and cross the "t"s in selecting products and implementing such audits. Election integrity experts and good government groups should be involved in the process.

Municipalities that currently complain about spending a few hundred dollars on an audit when they are randomly selected and have difficulty counting ballots manually, are hardly in a position to acquire such equipment, let alone evaluate the equipment, and develop an effective, satisfactory process.

**In addition, this bill would approximately triple the costs of manual audits for municipalities over the current law.** While we are long-time advocates for stronger post-election audits we do not support the current text which would greatly increase the number of contests audited from three races to all the contests on the ballot, as we read the text. **We would strengthen the law in other, cost effective ways.**

Text of proposed bill

16 (b) The voting districts subject to the audit described in subsection  
17 (a) of this section shall be selected in a random drawing by the  
18 Secretary of the State and such selection process shall be open to the  
19 public. [The offices subject to the audit pursuant to this section shall  
20 be, (1) in the case of an election where the office of presidential elector  
21 is on the ballot, all offices required to be audited by federal law, plus  
22 one additional office selected in a random drawing by the Secretary of  
23 the State, but in no case less than three offices, (2) in the case of an  
24 election where the office of Governor is on the ballot, all offices  
25 required to be audited by federal law, plus one additional office  
26 selected in a random drawing by the Secretary of the State, but in no  
27 case less than three offices, (3) in the case of a municipal election, three  
28 offices or twenty per cent of the number of offices on the ballot,  
29 whichever is greater, selected at random by the municipal clerk, and  
30 (4) in the case of a primary election, all offices required to be audited  
31 by federal law, plus one additional office, if any, but in no event less  
32 than twenty per cent of the offices on the ballot, selected in a random  
33 drawing by the municipal clerk.]



We propose long term and interim approaches to strengthening the audits, as a substitute for the language of this bill, while more effectively meeting its good intentions:

To start toward a long term solution, we propose a transparent study of machine based auditing: its costs, value, and possible implementation, concluding with a report and public hearings before this Committee.

Proposed purpose for machine auditing study

***TO PROVIDE FOR THE EVALUATION OF INDEPENDENT, TRANSPARENT, MACHINE BASED POST-ELECTION AUDITS, WITH RECOMMENDATIONS TO THE LEGISLATURE***

**Purpose:** Provide funding and direction for evaluating and recommending laws and procedures for machine based post-election audits. This act will: Provide authorization for a committee appointed by the legislature to evaluate emerging technology for independent, transparent electronic post-election auditing; report on such evaluation, recommending if, how, and when such technology could be utilized in Connecticut; provide for committee representation from the Secretary of the State, legislature, local election officials, computer and security experts, and good government groups; provide for public observation and input to such evaluation plans and reports; and for public legislative hearings by January 2012 on such recommendations.

**In the interim, we propose, a more efficient and effective manual audit that would strengthen the audit, remove ballots exempt from the audit, increase public confidence, at no increase in cost.**

As documented in our testimony last year, post-election audits are a good value, costing between \$70,000 to \$80,000 for large-turnout even-year November elections.

We provide links to the most recent Coalition post-election audit reports supporting the need for improvement and our recommendations for improving the audit law:

<http://www.ctelectionaudit.org/nov-2011-election-audit-observation-report/>

<http://www.ctelectionaudit.org/aug-10-election-observation-report-incremental-improvement-new-integrity-issue/>

We provide links to national recommendations for the conduct of post-election audits, endorsed by good government groups, including Common Cause, Verified Voting, The Brennan Center for Justice, and The League of Women Voters:

<http://www.electionaudits.org/principles>

[http://www.lwv.org/Content/ContentGroups/Membership/ProjectsTaskforces/Report\\_ElectionAudits.pdf](http://www.lwv.org/Content/ContentGroups/Membership/ProjectsTaskforces/Report_ElectionAudits.pdf)

Proposed draft text to strengthen audits with no increase in cost

***TO STRENGTHEN POST-ELECTION AUDIT INTEGRITY AND EFFICIENCY***

**Purpose:** Increase integrity and public confidence in elections, by improving post-election audits, and necessary related provisions of the law, providing higher levels of confidence with more efficient use of current audit resources. This act will: Make post-election audit and other procedures enforceable; eliminate ballot and contest exemptions in the current law; provide for transparency in all aspects of the post-election audit process; and increase the effectiveness and efficiency of audits by increasing the variety of contests audited, subjecting all contests to potential selection, subjecting all voting tabulators to potential selection, subjecting all ballots to selection, and eliminating counting of non-contested races.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

**Section 1.** Section 9-320f of the general statutes is repealed and the following is substituted in lieu thereof (effective July 1, 2011)

Manual audit of votes by registrars of voters or town clerk. Offices subject to audit. ~~University of Connecticut~~ Post-election audit analysis. Discrepancy recanvass. Voting [machine] tabulator failure to record votes and inaccurate manual counting. Secretary of the State investigation and report. Regulations. Definitions.

(a) Not earlier than the fifteenth day after any election or primary and not later than two business days before the canvass of votes by the Secretary of the State, Treasurer and Comptroller, for any federal or state election or primary, or by the town clerk for any municipal election or primary, the registrars of voters shall conduct a manual audit of the votes recorded in ~~[not less than ten per cent of the]~~ voting districts and optical scan central count<sup>1</sup> voting locations in the state, district or municipality, whichever is applicable. The number of districts and optical scan central count voting locations selected for the manual audit will be equal to eight percent of the voting districts in the election or primary plus the number of central count absentee vote counting loctions.<sup>2</sup> Such manual audit, random selections, and any associated investigations involving ballots, shall be noticed advance by registrars of voters or the investigating authority to the Secretary of the State at least four business days in advance, noticed on the Secretary of the State's web site three business days in advance, and be open to public observation. The unsealing and resealing of ballots shall occur as part of the scheduled, publicly noticed local manual counting sessions or investigations of the post-election audit. Any election official who participates in the administration and conduct of an audit pursuant to this section shall be compensated by the municipality at the standard rate of pay established by such municipality for elections or primaries, as the case may be.

(b) The voting districts subject to the audit described in subsection (a) of this section shall be selected in a random drawing by the Secretary of the State and such selection process shall be open to the public. The ~~[offices]~~ <sup>3</sup> contests subject to the audit pursuant to this section shall be, (1) in the case of an election where the office of presidential elector is on the ballot, all offices required to be audited by federal law, plus one additional ~~[office]~~ contest selected in a random drawing ~~[by the Secretary of the State]~~, but in no case less than three offices, (2) in the case of an election where the office of Governor is on the ballot, all offices required to be audited by federal law, plus one additional ~~[office]~~ contest selected in a random drawing ~~[by the Secretary of the State]~~, but in no case less than three ~~[offices]~~ contests, (3) in the case of a municipal election, three ~~[offices]~~ contests or twenty per cent of the number of ~~[offices]~~ contests on the ballot, whichever is greater, selected at random ~~[by the municipal clerk]~~, and (4) in the case of a primary election, all offices required to be audited by federal law, plus one additional office, if any, but in no event less than twenty per cent of the offices on the ballot, selected in a random drawing ~~[by the municipal clerk]~~. All contests not required to be audited by federal law will be selected by random drawing. All drawings for contest selection will be conducted by the municipal clerk,<sup>4</sup> separately for each district, excluding from selection all offices with unopposed candidates,<sup>5</sup> publicly as the first event of the local manual counting session of the post-election audit.

(c) ~~If a selected voting district has an office that is subject to recanvass or an election or primary contest pursuant to the general statutes, the Secretary shall select an alternative district, pursuant to the process~~

<sup>1</sup> The programming of central count optical scanners varies slightly from that of district count machines and is more complex since it contains code for several districts, making these machines subject to different and likely highly possibilities for human program or machine software error. They should be subject to the audit.

<sup>2</sup> The optical scanners would be selected from the voting districts and the central count locations. The number selected, however, would be about 1% less than currently selected, but the audit would cover more races due to changes in the selection process and the elimination from selection of non-contested races. In addition hand counted paper ballots would be included in the audit.

<sup>3</sup> This change expands the contests subject to audit to include questions, since like races they are subject to the potential of error or fraud. It also eliminates from eligibility for audit any races that are uncontested. This change should not reduce the purpose of checking machine and manual counting accuracy, yet increase the confidence in election integrity. It does not increase costs, since the same number of contests are being audited. In fact it might slightly decreases costs since questions are somewhat simpler to count.

<sup>4</sup> The change will have all selections by municipal clerk and different for each district – this will insure a variety of races will be audited across the state, enhancing integrity and public confidence without increasing the amount of counting. Currently in municipal elections and primaries the drawing is by the municipal clerk. Currently for statewide/Federal elections it is a single drawing by the Secretary of the State. Currently there is a significant potential to select races with large margins, and missing selection of races of significant interest to the public.

<sup>5</sup> Currently the selection of contests for audit is not required to be public – a huge hole in transparency. Holding it at the beginning of the municipal counting session eliminates the need for two public events, two public notifications, and makes it much more convenient for the public to attend.

described in subsection (b) of this section.} If a voting district with a contest subject to a recanvass<sup>6</sup> is selected for audit, then one less contested will be selected to be manually counted in that district. (2) For optical scan central count locations, one district counted by the central count location will be randomly selected for manual counting. If a voting district selected has a contest subject to an election or primary contest<sup>7</sup> pursuant to the general statutes where ballots are impounded or ballots are legally impounded for any other reason, then the audit counting session for that district will be held after ballots are no longer impounded for the voting district.

(d) The manual audit described in subsection (a) of this section shall consist of the manual tabulation of the paper ballots cast and counted by each voting tabulator and those manually counted for each district subject to such audit. Once complete, the vote totals established pursuant to the manual tabulation shall be compared to the results reported prior to the random district drawing by the municipality to the Secretary of the State for the district for the election or primary. The results of the manual tabulation shall be reported on a form prescribed by the Secretary of the State which shall include the total number of ballots counted, the total votes received by each candidate in question or yes and no for contests, the total votes received by each candidate in question or yes and no for contests on ballots, separately for votes that were originally tabulator and manually counted. In the case of machine counted ballots also separately for ballots that were properly completed by each voter and the total votes received by each candidate in question or yes and no for contests, on ballots that were not properly completed by each voter. Within twenty-four hours of the completion of the manual count, s[uch report shall be filed with the Secretary of the State who shall immediately post such report to the Secretary of the State's web site.], who shall immediately forward such report to The University of Connecticut for analysis. The University of Connecticut shall file a written report with the Secretary of the State regarding such analysis that describes any discrepancies identified. After receipt of such report, the Secretary of the State shall file such report with the State Elections Enforcement Commission}. The Secretary of the State will be responsible for the completion of further analysis of such reports, necessary further investigations, and filing an analysis report with the State Elections Enforcement Commission no later than sixty days (60) after the end of the municipal post-election audit counting sessions. If significant additional investigations are necessary, this report may well be an initial report indicating any open questions subject to further, timely investigation The Secretary of the State may contract all or a part of the analysis and investigations to any public or private university within the state of Connecticut.

(e) For the purposes of this section, a ballot that has not been properly completed will be deemed to be a ballot on which (1) votes have been marked by the voter outside the vote targets, (2) votes have been marked by the voter using a manual marking device that cannot be read by the voting ~~[machine]~~ tabulator, or (3) in the judgment of the registrars of voters, the voter marked the ballot in such a manner that the voting ~~[machine]~~ tabulator may not have read the marks as votes cast.

(f) Notwithstanding the provisions of section 9-311, the Secretary of the State shall order a discrepancy recanvass by manual count of all ballots<sup>8</sup> of the returns of an election or primary for any ~~[office]~~ contest if a discrepancy, as defined in subsection (o) of this section, exists where the margin of victory in the race for such office is less than the amount of the discrepancy multiplied by the total number of voting districts where such ~~[race]~~ contest appeared on the ballot, provided in a year in which the Secretary of the State is a candidate for an office on the ballot and that office is subject to an audit as provided by this section, the State Elections Enforcement Commission shall order a discrepancy recanvass by manual count of all ballots if a discrepancy, as defined by subsection (o) of this section, has occurred that could affect the outcome of the election or primary for such office.

(g) If the analysis ~~[The University of Connecticut]~~ report described in subsection (d) of this section indicates that a voting ~~[machine]~~ tabulator failed to record votes accurately and in the manner provided by the

<sup>6</sup> Recanvassing of a contest is not a manual count of ballots and should have little bearing on assessing the accuracy of optical scanners. By subjecting other contests within such a district to audit, integrity and public confidence will be increased. The current exemption of recanvassed districts unfairly increases the audit burden on municipalities without recanvassed districts.

<sup>7</sup> Exempting districts subject an election contest presents a loophole where a contest in one race can preclude an audit in another race. Like the exemption for recanvassed districts is unfairly shifts the audit burden to other municipalities.

<sup>8</sup> The current recanvass law and procedures perform recounting by machine. If there are concerns with the machine counting based on the audit, then the ballots should be recounted by hand.

general statutes, the Secretary of the State shall require that the voting [machine] tabulator be examined and recertified by the Secretary of the State, or the Secretary's designee. Nothing in this subsection shall be construed to prohibit the Secretary of the State from requiring that a voting [machine] tabulator be examined and recertified.

(h) The audit reports<sup>9</sup> filed pursuant to subsection (d) of this section shall be open to public inspection and may be used as prima facie evidence of a discrepancy in any contest arising pursuant to chapter 149 or for any other cause of action arising from such election or primary.

(i) If the audit officials are unable to reconcile the manual count with the electronic vote tabulation and discrepancies, the Secretary of the State shall conduct such further investigation of the voting [machine] tabulator or tabulator malfunction as may be necessary for the purpose of reviewing whether or not to decertify the voting [machine] tabulator or [machines] tabulators in question or to order the voting [machine] tabulator to be examined and recertified pursuant to subsection (g) of this section. Any report produced by the Secretary of the State as a result of such investigation shall be filed with the State Elections Enforcement Commission and the commission may initiate such further investigation in accordance with subdivision (1) of subsection (a) of section 9-7b as may be required to determine if any violations of the general statutes concerning election law have been committed.

(j) The individual paper ballots used at an election or primary shall be carefully preserved and returned in their designated receptacle in accordance with the requirements of section 9-266, 9-302 or 9-310, whichever is applicable.

(k) Nothing in this section shall be construed to preclude any candidate or elector from seeking additional remedies pursuant to chapter 149.

(l) After an election or primary, any voting [machine] tabulator or ballots may be kept locked for a period longer than that prescribed by sections 9-266, 9-310 and 9-447, if such an extended period is ordered by either a court of competent jurisdiction, the Secretary of the State or the State Elections Enforcement Commission. Either the court or the Secretary of the State may order an audit of such voting m[achine] tabulator to be conducted by such persons as the court or the Secretary of the State may designate, provided the State Elections Enforcement Commission may order such an audit under the circumstances prescribed in subsection (f) of this section. If the [machine] tabulator utilized in such election or primary is an optical scan voting system, such order to lock such [machine] tabulator shall include the tabulator, memory card and all other components and processes utilized in the programming of such [machine] tabulator.

(m) The Secretary of the State may adopt regulations and procedures, in accordance with the provisions of chapter 54, as may be necessary for the conduct of the manual tabulation of the paper ballots described in subsection (a) of this section and to establish guidelines for expanded audits when there are differences between the manual and machine audit counts and the originally reported results counts. The regulations and procedures for conducting audits shall be prescribed by the Secretary of the State and each municipal official shall comply with the process outlined by the Secretary of the State for conducting audits<sup>10</sup>.

(n) Notwithstanding any provision of the general statutes, the Secretary of the State shall have access to the code in any voting [machine] tabulator whenever any problem is discovered as a result of the audit described in subsection (a) of this section.

(o) As used in this section, "discrepancy" means any difference in vote totals between [machine] tabulator and manual counts in a voting district that exceeds one-half of one per cent of the lesser amount of the vote totals between [machine] tabulator and manual counts where such differences cannot be resolved through an accounting of ballots that were not marked properly in accordance with subsection (e) of this section, "state election" means "state election", as defined in section 9-1, and "municipal election" means a municipal election held pursuant to section 9-164.

<sup>9</sup> To emphasize that not just the overall audit report but the local counting session reports should be public and serve as prima facie evidence.

<sup>10</sup> Based on alternative text proposed by former SEEC Director Jeffery Garfield in testimony to the GAE in a public hearing on Feb 18, 2009.

**We oppose expanded mail-in voting in any form, including no-excuse absentee voting.**

**The primary reason to avoid expanded mail-in or no-excuse absentee voting is the opportunity for and documented record of fraud – it seems that after every national election we find stories of fraud, prosecution, and conviction based on mail-in voting. We provide links to recent reports in OH, FL, AZ, CA, and TX.**

OH: <http://ctvoterscount.org/absentee-ballot-fraud-in-ohio/>

FL: <http://ctvoterscount.org/no-excuse-absentee-voting-unintended-consequences/>

AZ, CA, FL: <http://ctvoterscount.org/absenteeearly-voting-raise-questions-and-risks/>

TX: <http://ctvoterscount.org/how-not-to-increase-voter-participation/>

Not so long ago candidates and party workers in large cities in Connecticut were convicted and penalized for absentee ballot fraud.

I agree with MIT Professor and Security Expert Ron Rivest who recommends that:

*“Unsupervised remote voting [including absentee voting is] vulnerable to vote-selling, bribery, and coercion. Communication with voter[s], and transmission of ballots, may be unreliable/manipulable.”*. Rivest concludes that: *“Remote voting should be allowed only as needed, for at most 5% of voters”*.

<http://www.ctvoterscount.org/ron-rivest-militaryoverseas-internet-voting-risks-and-rewards/>

**There is another reason to oppose early voting including no-excuse absentee voting – it does not accomplish its intended purpose – it DECREASES election turnout - A recent academic report showed that early voting, including mail-in voting, decreases turnout by 3%, while an earlier report showed a reduction of 2.6% to 2.9%.**

The recent report is a PEW supported University of Wisconsin study. The earlier report from, 2007, is by researchers at the University of San Diego and Temple University.

We provide links to both reports and the text of a New York Times Op-Ed by the authors of the recent report report.

<http://www.pewtrusts.org/uploadedfiles/wwwpewcenteronthestatesorg/Initiatives/MVW/UWwisconsin.pdf>

<http://weber.ucsd.edu/~tkousser/votbymail.htm>

And an article covering concerns with mail-in voting:

<http://californiawatch.org/dailyreport/cheaper-popular-mail-ballots-worry-critics-7479>

## The Opinion Pages

### Voting Early, but Not So Often

By BARRY C. BURDEN and KENNETH R. MAYER

Published: October 24, 2010

ELECTION Day is nearly upon us, but for many voters it has already come and gone. States have aggressively expanded the use of early voting, allowing people to submit their ballots before Election Day in person, by mail and in voting centers set up in shopping malls and other public places. More than 30 percent of votes cast in the 2008 presidential race arrived before Election Day itself, double the amount in 2000. In 10 states, more than half of all votes were cast early, with some coming in more than a month before the election. Election Day as we know it is quickly becoming an endangered species.

Early voting offers convenience and additional opportunities to cast a ballot. Common sense tells us that this should mean higher turnout. But a thorough look at the data shows that the opposite is true: early voting depresses turnout by several percentage points.

Our research, conducted with our colleagues David Canon and Donald Moynihan at the University of Wisconsin, is based on a three-part statistical analysis of the 2008 presidential election. First, we analyzed voting patterns in each of the nation's 3,100 counties to estimate the effect of early voting laws on turnout. We controlled for a wide range of demographic, geographic and political variables, like whether a county was in a battleground state.

Controlling for all of the other factors thought to shape voter participation, our model showed that the availability of early voting reduced turnout in the typical county by three percentage points. Consider, as an example, a county in Kentucky, which lacks early voting. If we compared this to a similar county in neighboring Tennessee, which permits early voting, we would observe, other things being equal, turnout that was 3 points lower.

Next, we studied the data on more than 70,000 voters and nonvoters from the Census Bureau's Current Population Survey, which asks respondents whether they voted. Once again, we employed a statistical model to control for demographic variables like education and race as well as geographic and political factors. The model showed that an individual living in a state with early voting had a probability of voting that was four points lower than a comparable voter in a state without early voting.

Third, we took advantage of a useful feature of the census survey, which asks individuals whether they voted early or on Election Day. We examined the characteristics of voters and nonvoters, and found that the profiles of early voters and election day voters were mostly similar.

With one big exception: our model forecast that early voters had profiles that made them two percentage points more likely to vote than Election Day voters, whether there was an early option or not. Early voters were more educated and older and had higher incomes, all traits associated with a higher probability of voting. A probability difference of 2 percentage points may seem like a trivial figure, but when applied to populations of millions, it can shift national and state elections.

Even with all of the added convenience and easier opportunities to cast ballots, turnout not only doesn't increase with early voting, it actually falls. How can this be? The answer lies in the nature of voter registration laws, and the impact of early voting on mobilization efforts conducted by parties and other groups on Election Day.

In most states, registration and voting take place in two separate steps. A voter must first register, sometimes a month before the election, and then return another time to cast a ballot. Early voting by itself

does not eliminate this two-step requirement. For voters who missed their registration deadline, the convenience of early voting is irrelevant.

Early voting also dilutes the intensity of Election Day. When a large share of votes is cast well in advance of the first Tuesday in November, campaigns begin to scale back their late efforts. The parties run fewer ads and shift workers to more competitive states. Get-out-the-vote efforts in particular become much less efficient when so many people have already voted.

When Election Day is merely the end of a long voting period, it lacks the sort of civic stimulation that used to be provided by local news media coverage and discussion around the water cooler. Fewer co-workers will be sporting "I voted" stickers on their lapels on Election Day. Studies have shown that these informal interactions have a strong effect on turnout, as they generate social pressure. With significant early voting, Election Day can become a kind of afterthought, simply the last day of a drawn-out slog.

Fortunately, there is a way to improve turnout and keep the convenience of early voting. Our research shows that when early voting is combined with same-day registration — that is, you can register to vote and cast an early ballot on the same day — the depressive effect of early voting disappears. North Carolina and Vermont, two otherwise very different states that combined early voting with same-day registration, had turnout levels in 2008 that were much higher than the overall national figure of 58 percent of the voting-age population. Turnouts in Vermont and North Carolina were, respectively, 63 percent and 64 percent. Allowing Election-Day registration, in which voters can register at the polling place, has the same effect. Our models show that the simple presence of Election-Day registration in states like Minnesota and New Hampshire increases turnout by more than six points.

By removing barriers that require potential voters to register weeks before a campaign reaches its height, less-engaged citizens can enter the voting process late — and political campaigns can respond by maintaining the intensity of their efforts through Election Day.

The implications for policymakers are obvious. Adopting a form of "one-stop shopping" facilitates a larger and more representative set of voters. Early voting may be the most popular reform sweeping across the states, but it alone is not the key to raising voter turnout.

Barry C. Burden and Kenneth R. Mayer are professors of political science at the University of Wisconsin-Madison.

**S.B. No. 942 – Support, with suggested improvements**  
**Government Administration and Elections Committee**  
**Testimony – February 14, 2010**

**Luther Weeks**  
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We support this bill which would correct an issue with post-election audit integrity and to reduce the probability and impact of running out of printed ballots.

We have some suggestions for improvement.

**Sec 2. (NEW) mandates contingency plans for ballot shortages. Line 44 requires registrars to notify the Secretary of the State of activations of such plans 30 days after the fact.**

We suggest that is way too late for any assistance or oversight. We propose 90 minutes maximum, unless there is a complete telecommunications breakdown in the municipality.

Proposed substitute text (our recommendations in bold)

44 of such activation to the Secretary of the State not later than [thirty days] 45 <u>ninety minutes</u> after such activation, <b><u>barring an emergency that prevents such communication and in any circumstance, prior to or concurrent with the time when initial election results are reported to the Secretary of the State.</u></b>
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**Sec 4. (NEW) Requires registrars to supply names of moderators to the Secretary of the State and provides the Secretary with the authority to disqualify such registrars.**

While registrars have a deadline for supplying the names of moderators, there seems to be no deadline imposed on the Secretary for disqualifying them. **Sufficient notice should be required so that registrars have time to secure replacement moderators.**

**Sec 4. (NEW) Also requires registrars to certify to the Secretary of the State a list of polling places prior to each election.** The Secretary of the State needs to have an accurate list of polling places to be in compliance with the law and to restore the integrity of the post-election audit random drawing.

**We support this goal, but propose a more efficient 21<sup>st</sup> century solution.**

We recommend instead that registrars be required to certify that the Statewide Centralized Voter Registration System is up to date with the correct list of polling places, rather than submit a list of polling places. In 2010 the Secretary of the State's Office used the registration system information to provide voters with online access to verify their registration and determine the location of their polling place – it would seem to be more efficient to have

- registrars be required to keep the online list accurate,
- provide voters with certified accurate information.

Our recommendation would

- avoid redundant transcription by the registrars,
- reduce the paperwork and redundant data entry required for the random drawing, while increasing automation at the Secretary of the State's Office,
- and provide voters with accurate polling place information, available online.

However, if we have misunderstood and the online list is already accurate, then there is no need for this law. The online list could be extracted, as is, to restore the integrity of the audits.



We provide references to the most recent Coalition post-election audit reports demonstrating the lack of integrity in the two most recent post-election audit drawings.

<http://www.ctelectionaudit.org/nov-2011-election-audit-observation-report/>

<http://www.ctelectionaudit.org/aug-10-election-observation-report-incremental-improvement-new-integrity-issue/>

And a reference to the Coalition Bridgeport Recount Report which includes a list of recommended changes which go beyond those included in this bill:

<http://www.ctelectionaudit.org/bridgeport-recount-report/>

## H.B. No. 6330 – Support, with suggested improvements

Government Administration and Elections Committee

Testimony – February 14, 2010

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We support the many of the updates based on the change to optical scanners. There are several areas that have not been addressed. Today, we suggest some of those which we have noticed. Some are easily accomplished, while others would require extensive revisions.

Pages 23-24, lines 699 to 723 (9-260). This bill, like S.B. 939, contemplate a demonstrator “device” replacing the demonstrator “machine”. This seems ambiguous, as to what that device may be, providing little guidance to election officials in meeting the requirements of the section. I am unaware of any such “device” employed since we have changed to optical scan machines. The text could easily be interpreted as requiring a demonstrator for the IVS machines at considerable cost. Our recommendation would be to strike the section from the current law.

On page 24, lines 747 to 750 (9-272). In this bill, like S.B. 939, one critical word “securing” seems to have been omitted which would make the intention consistent.

Proposed substitute text (our recommendations in bold)

747 ... <u>The procedures for securing and counting the paper</u>
748 <u>ballots described in this section shall comply as nearly as may be, in</u>
749 <u>the manner prescribed by the Secretary of the State, to the securing and counting of</u>
750 <u>absentee ballots.</u>

On page 26, line 786 (9-311(a)) In this bill, like S.B. 939, a “he” has been left in the law.

On pages 27, lines 819-851 (9-311(b)) In this bill, like S.B. 939, describing recanvasses, we note that the text has been updated from “machine” to “tabulator” but makes no mention of tabulator-counted ballots being sealed or unsealed and does not seem to contemplate four classes of ballots: polling-place hand-counted; polling place tabulator-counted; central-hand-counted absentee; and central-tabulator-counted absentee ballots.

Based on the events in Bridgeport, in the Bridgeport Recount Report, the Coalition recommended that the recanvass law and election calendar be changed to provide more time for discrepancy and close vote recanvasses:

Two recommendations from Coalition Bridgeport Recount Report

- *In addition to head moderators, the Secretary of the State should have the power to order discrepancy recanvasses.*
- *Allow more time for the initial reporting of results, investigation of minor discrepancies, and for the accomplishment of recanvasses and the certification of results. There should a timeframe for discrepancy recanvasses, followed by a timeframe for subsequent close vote recanvasses. The current post-election and certification schedule in Connecticut should not be viewed as unchangeable. For example there could be a seven business day window for Discrepancy Recanvasses and their reporting and an additional five business day window for Close Vote Recanvasses to allow for changes in the initial reports resulting from Discrepancy Recanvasses.*

**H.B. No. 6331 – Support, with suggested improvements**

**Government Administration and Elections Committee**

**Testimony – February 14, 2010**

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We support the many of the updates based on the change to optical scanners. There are several areas that have not been addressed. Today, we suggest some of those which we have noticed. Some are easily accomplished, while others would require extensive revisions.

I have no specific comments on this bill. Suggestions for areas needing more work are included with testimony today for other similar technical bills.

## **H.B. No. 6332 – Support**

**Government Administration and Elections Committee  
Testimony – February 14, 2010**

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We support the many of the updates based on the change to optical scanners. There are several areas that have not been addressed. Today, we suggest some of those which we have noticed. Some are easily accomplished, while others would require extensive revisions.

**On pages 1-3, lines 1 to 57 (9-309) covering closing of the polls, like S.B. 938, one change is suggested.**

**The current text only covers sealing of tabulators, completely disregarding the importance of sealing polling place ballots. We also point out that sealing and security of ballots should be clarified in the law in several places, specifying exactly how ballots should be secured, how they should be stored, storage facility requirements, the storage protected, storage access logged, inappropriate access prevented, and the length of time ballots should be sealed and protected – we recommend that all ballots be sealed and secured at all times when not in legal use, such that it is highly unlikely that a single individual could access the ballots or their sealed containers undetected.**

We provide a link to a reference demonstrating the inadequacy of seals alone to protect ballots and tabulators:

<http://www.ctvoterscount.org/nj-chain-of-custody-six-unsuccessful-attempts-to-seal-voting-machines/>

**Unlike S.B. 839 this bill does appropriately specify that votes be recorded and announced separately by tabulator-counted and hand-counted.**

**On pages 8-10, lines 241 to 287 (9-436[(d)](c)) this bill makes a needed, common sense, change to allow out of town officials to serve in primaries just like they do in elections.**

Twice I have been asked to serve in primary elections by registrars of voters in two different towns. Fortunately, the first time, before I understood the law I was unable to serve. The second time I declined to avoid violating the law.

**This is an example of a general problem. The election law is redundant, confusing, and open to ambiguous multiple interpretations. It should be reorganized and simplified. We provide two examples illustrating this problem:**

- The laws for primaries, elections, municipal, state, and federal elections are redundant and different. There are some aspects where they need to be different, but others in which they seem different, only because the law was written at different times or changed inconsistently over the years. The current law makes it more difficult for anyone who is expected to understand or follow the law.

- The chain of custody and security of ballots is confusing and distributed across several sections of the law. Much of the law was written contemplating all paper ballot elections with ballot boxes, generally no longer in use; other parts of the law made for absentee ballots contemplating elections with only a small percentage of the vote on paper ballots. The chain of custody and security for all ballots should be the same.

The law should be strengthened, clarified, and reviewed in the context all votes being cast on paper ballots and the majority being cast in polling places via optical scanners. Once again, current law makes it more difficult for everyone who is expected to understand or to follow the law.